

July 23, 2004
Case No.: FR 000029 (7790/353)
Serial No.: 09/817,086
Filed: March 26, 2001
Page 4 of 9

REMARKS/DISCUSSION OF ISSUES

Specification. In the Advisory Action, Examiner Phu maintained his final objection to the amendment of Specification and Abstract filed on April 1, 2004, under 35 U.S.C. §132 as introducing new matter into the disclosure. The Applicant hereby respectfully traverses this final objection of the amendment of Specification and Abstract filed on April 1, 2004.

Specifically, in the Advisory Action, Examiner Phu respectfully asserts that the Applicant argument that the specification and abstract do support the added limitation "operation software" in view of the disclosure of PCT WO 97/35453 for updating and modifying the operation software is unsupported, because the Applicant did not incorporate PCT WO 97/35453 by reference in the original specification. The Applicant respectfully disagrees with the aforementioned assertion by Examiner Phu for two reasons.

First, the present application does not have a need to rely on any teaching in PCT WO 97/35453 to fulfill its written description, best mode and enablement requirements in accordance with 35 U.S.C. §112. Thus, there is no need to incorporate PCT WO 97/35453 by reference in the original specification.

Second, the preamble of the original specification reads "The invention relates to an apparatus of a certain type comprising a storage device for storing performance data. ... Such an apparatus is known from patent document PCT WO 97/35453 For updating or modifying the operation software of the apparatus, there is proposed in this patent document to utilize a PC type of computer, for example. The apparatus known from this document has the drawback that the use of such a computer may present difficulties and call for a certain infrastructure. For example, a server must be provided from which the information to be updated is obtained. Furthermore, one has to know how his update program is to be started." *See, U.S. Patent Application Serial No. 09/817,086* at page 1, lines 1-16. Clearly, the present application has presented a drawback to PCT WO 97/35453 as related to updating or modifying operation software of an apparatus via a PC type of computer.

July 23, 2004
Case No.: FR 000029 (7790/353)
Serial No.: 09/817,086
Filed: March 26, 2001
Page 5 of 9

The present application thereafter asserts the objective of the present application is to overcome the aforementioned drawback of PCT WO 97/35443 by stating "The present invention proposes an apparatus of the type mentioned in the preamble which avoids the necessity of using a computer. For this purpose, such an apparatus is characterized in that it comprises updating means for updating its storage device from another apparatus of the same type. A method of the type defined above is characterized in that said update data are tapped from another apparatus of the same type." See, U.S. Patent Application Serial No. 09/817,086 at page 1, lines 17-22. Clearly, the objective of the present invention is to eliminate the need for a computer to update or modify the operation software of an apparatus (e.g., a mobile telephone) as taught by PCT WO 97/35453 by providing updating means for updating the storage device of the apparatus from another apparatus of the same type (e.g., another mobile telephone). Thus, it is implicitly inherent that the present invention proposes an apparatus (e.g., a mobile telephone) which avoids the necessity of using a computer for updating operation software within a storage device of the apparatus. See, MPEP §2163.07(a).

In summary, both the introduction of the term "operation software" in the preamble as related to a drawback of the prior art in using a computer to update or modify the "operation software" and the objective of the present application to eliminate the need for a computer to update or modify the "operation software" support the term "operation software" in the original specification. The amendment of the Specification and the Abstract filed on April 1, 2004, therefore does not add new matter to the original disclosure. Withdrawal of the objection to the amendment of Specification and Abstract filed on April 1, 2004, under 35 U.S.C. §132 as introducing new matter into the disclosure is therefore respectfully requested.

July 23, 2004
Case No.: FR 000029 (7790/353)
Serial No : 09/817,086
Filed: March 26, 2001
Page 6 of 9

Claims In the Advisory Action, Examiner Phu maintained final rejections of pending claims 1-7 on various grounds. The Applicant responds to each rejection as subsequently recited herein, and respectfully requests reconsideration of the present application under 37 CFR § 1.114.

- A. Examiner Phu rejected claims 1-7 under 35 U.S.C. § 112, ¶1 as failing to comply with the written description requirement.

The Applicant respectfully traverses this rejection of claims 1-7 for the same reason herein the Applicant respectfully traversed herein the objection to the amendment of Specification and Abstract filed on April 1, 2004, under 35 U.S.C. § 132 as introducing new matter into the disclosure. Withdrawal of the rejection of claims 1-7 under 35 U.S.C. § 112, ¶1 as failing to comply with the written description requirement is therefore respectfully requested.

- B. Examiner Phu rejected claims 1, 2 and 5-7 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,041,229 to *Turner*

The Applicant has thoroughly considered Examiner Phu's remarks concerning the patentability of claims 1, 2 and 5-7 over *Turner*. The Applicant has also thoroughly read *Turner*. To warrant this anticipation rejection of claims 1, 2 and 5-7, *Turner* must show each and every limitation of claims 1, 2 and 5-7 in as complete detail as is contained in claims 1, 2 and 5-7. See, MPEP § 2131. The Applicant respectfully traverses this anticipation rejection of claims 1, 2 and 5-7, because *Turner* fails to disclose and teaches away from an updating of performance data within a storage device as encompassed by claims 1, 2, and 5-7.

July 23, 2004
Case No.: FR 000029 (7790/353)
Serial No.: 09/817,086
Filed: March 26, 2001
Page 7 of 9

Specifically, *Turner* discloses an updating of configuration information (i.e., non-performance data) in the form of user-defined information and telephone identification information within a storage device. *See, Turner* at column 1, lines 10-20; column 2, lines 14 and 15; column 3, line 13 to column 4, line 45; and column 5, lines 51-54. In the Advisory Action, Examiner Phu respectfully asserts that the term "operating software" can be broadly and reasonably interpreted to include the configuration information of *Turner*. The Applicant hereby respectfully disagrees with the aforementioned assertion by Examiner Phu, because the broadest reasonable interpretation of the terms "operation software", "update" and "configuration information" must be consistent with the interpretation that those having skill in the art would reach. *See, MPEP* §2111. Unequivocally, the terms "operation software", "update" and "configuration information" have well known meanings in the computer art whereby one skilled in the art will interpret that the "configuration information" of *Turner* would be used to control the behavior of the "operation software", but would not be used to "update" the "operation software". Thus, *Turner* fails to teach or suggest "updating means for updating the operation software stored within said storage device via an interfacing with another apparatus of the same type" as recited in independent claim 1, "tapping update data from a second apparatus of the same type as the first apparatus to update the operation software in the first apparatus" as recited in independent claim 5, and "means for exchanging update data for updating operation software stored within a first apparatus, wherein a second apparatus communicates the update data to the first apparatus and the operation software stored within the first apparatus is updated with the update data" are recited in independent claim 7.

Withdrawal of the rejection of claims 1, 2 and 5-7 under §102(e) as being anticipated by *Turner* is therefore respectfully requested.

July 23, 2004
Case No.: FR 000029 (7790/353)
Serial No.: 09/817,086
Filed: March 26, 2001
Page 8 of 9

C: Examiner Phu rejected claims 3 and 4 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,041,229 to *Turner* in view of U.S. Patent No. 6,285,916 to *Grant et al.*

Claims 3 and 4 depend from independent claim 1. Therefore, dependent claims 3 and 4 include all of the elements and limitations of independent claim 1. It is therefore respectfully submitted by the Applicant that dependent claims 3 and 4 are allowable over *Turner* in view of *Grant* for at least the same reason as set forth with respect to independent claim 1. Withdrawal of the rejection of dependent claims 3 and 4 under U.S.C. §103(a) as being patentable over *Turner* in view of *Grant* is therefore respectfully requested.

July 23, 2004
Case No.: FR 000029 (7790/353)
Serial No.: 09/817,086
Filed: March 26, 2001
Page 9 of 9

SUMMARY

Examiner Phu's rejections of pending claims 1-7 have been obviated by the remarks herein overcoming the new matter rejection and supporting an allowance of claims 1-7 over *Turner*. The Applicant respectfully submits that claims 1-7 as listed herein fully satisfy the requirements of 35 U.S.C. §§ 102, 103 and 112. In view of the foregoing, favorable consideration and early passage to issue of the present application is respectfully requested. If any points remain in issue that may best be resolved through a personal or telephonic interview, Examiner Phu is respectfully requested to contact the undersigned at the telephone number listed below.

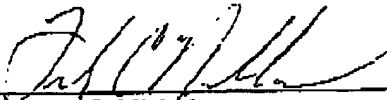
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Respectfully submitted,
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